

**UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

NEW CENTURY MORTGAGE CORP.,

Plaintiff,

v.

GREAT NORTHERN INSURANCE  
COMPANY, FEDERAL INSURANCE  
COMPANY,

Defendants.

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) CASE NO. 05C2370

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) Judge Coar

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) **PLAINTIFF'S OBJECTION TO THE  
OF AFFIDAVIT OF DANIEL J.  
CUNNINGHAM**

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## **I. CHUBB RELIES ON INADMISSIBLE DOCUMENTS**

### **A. Chubb Has Failed to Authenticate Any of the Documents that Chubb Has Attached to Chubb's Exhibit 4; as a Result, the Documents Attached to Chubb's Exhibit 4 – Documents "A" Through "U" – Lack Foundation and Are, Therefore, Inadmissible**

At paragraph 6 of the Cunningham Affidavit, Mr. Cunningham testifies that "Attached hereto as Exhibit 4 is a true and correct copy of Plaintiff's Responses to Defendants' First Set of Requests for Admission submitted by NCMC in the Minnesota Action. Exhibit 4 includes a complete set of the exhibits addressed by the requests for admission." Mr. Cunningham lays no foundation for his assertion that the exhibits Chubb has inserted after Exhibit 4—denominated as Exhibits "A" through "U"—are the documents referenced in Chubb's requests for admission.

More important, however, is that even if Chubb had laid a proper foundation for Mr. Cunningham's conclusion that Exhibits "A" through "U" are "addressed" by Chubb's requests for admission, the documents would not be **authenticated** because there is nothing in NCMC's discovery responses stating that authentic copies of the documents are attached.

As a result, NCMC objects to Documents "A" through "U," which are attached to Chubb's Exhibit "A" to its Appendix of Exhibits, on the ground that the documents lack foundation and are therefore inadmissible for any purpose.

### **B. Documents "A" Through "U" to Chubb's Exhibit 4 Contain Inadmissible Hearsay on Which Chubb Relies for the Truth of the Matter**

Even were documents "A" through "U" to Chubb's Exhibit 4 properly authenticated, the documents are still inadmissible. On each occasion Chubb relies upon one of these documents in Chubb's Statement of Facts, Chubb relies upon the document for the truth of the matter stated in the document. FED. R. EVID. 802. Many of the statements upon which Chubb relies are multiple hearsay, as the documents repeat or contain allegations. Yet Chubb relies on the purported truth of these allegations repeatedly in its Statement of Facts. As a result, these documents are inadmissible hearsay.

### **C. The Minnesota State District Court's March 18, 2005 Order Is Irrelevant and Has No Probative Value**

Chubb relies on Exhibit 1 to the Cunningham Affidavit, the Minnesota State District Court's March 18, 2005 order of dismissal for inconvenient venue, to attack the merits of NCMC's case. The March 18, 2005 Court Order, however, is inadmissible for this purpose. In fact, the State of Minnesota District Court expressly concludes that:

Because the Court finds on the threshold question that it is not equitable to try this matter in Minnesota, it does not enter formal findings on this issue or any of the other issues presented in the cross-motions for summary judgment.

Accordingly, Exhibit 1 is irrelevant and should be excluded as its prejudice outweighs its probative value. The Minnesota Action was dismissed and the case was re-filed in Illinois. This is not in dispute as NCMC filed the Illinois action. Thus, there is no probative value in attaching the order, other than to prejudice the Court, making the exhibit irrelevant. FED. R. EVID. 402 and 403.

Dated: October 27, 2005

**NEW CENTURY MORTGAGE  
CORPORATION**

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